

TABLE 1.
Comparison of the 1996 Dam Removal Alternative (Partial Sediment Removal) and the 2002 Dam Removal Alternative (No Sediment Removal) Associated with the Land Used For Spoils Disposal.

Issue	Dam Removal Alternative-Partial Sediment Removal (FEIS October 1996)	Dam Removal Alternative (FSFEIS June 2002) Analyzed in the Draft SEIS
Context	The 1996 FEIS Dam removal alternative proposed dredging half of the sediments from the reservoir.	No dredging proposed.
Staging Area/Dredge Disposal Area	<p>Short-term adverse effects on a 50-acre spoil disposal site. This area will be re-vegetated after demolition and construction. The disposal area would be located in previously disturbed lands (rangeland and fruit orchard).</p> <p>FSFEIS 2002 concludes more disturbance to plant and wildlife habitat for this alternative.</p> <p>1996 FEIS does not mention federally listed species within the 50 acre site.</p>	<p>6 acres of pasture and Douglas fir could be cleared for equipment staging and spoil disposal. After construction this area would be re-seeded and contoured to the existing state. If the 10-acre site was near the dam would be used rather than the 6-acre site, then big leaf maple and Douglas fir would be cleared. A small area of palustrine and emergent wetlands would be adversely affected by the use of this site.</p> <p>2002 FSFEIS reports a western pond turtle and bald eagle have been observed at this 10-acre location.</p>

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Issue	Dam Removal Alternative-Partial Sediment Removal (FEIS October 1996)	Dam Removal Alternative (FSFEIS June 2002) Analyzed in the Draft SEIS
Access Roads	Temporary loss of vegetation and associated wildlife habitat from constructing 2.5 miles of access roads. Remove access and haul roads after construction and demolition and restore the land to original contours with vegetation.	Temporary loss of vegetation and associated wildlife habitat from constructing 2.5 miles of access roads. Remove access and haul roads after construction and demolition and restore the land to original contours with vegetation. Ground disturbance on the steep slopes over which the access road would be located would result in short-term erosion effects and allow sediments to be carried into the bypassed stream channel below the dam.
Construction/Demolition Duration	5 years	1 year
Air Quality/Noise	Increase in construction noise, traffic, equipment exhaust, fine particulates in the air, and disturbance to fish and wildlife since the duration of construction would be longer.	Less construction noise, traffic, equipment exhaust, fine particulates in the air, and disturbance to fish and wildlife than the 1996 alternative for dam removal.
Bald Eagles (federal and state listed species)	Winter-residence in study area. Could be affected by construction activity. Eagles are not specified to be located within the staging area.	Winter-residence in study area. Could be affected by construction activity. Eagles are not specified to be located within the staging area.
Osprey (state monitor species)	Nests near Northwestern Lake, within 0.5 miles of the lake, and another nest 1 mile from the mouth of the river. Osprey are not specified to be located within the staging area.	Nests near Northwestern Lake, within 0.5 miles of the lake, and another nest 1 mile from the mouth of the river. Osprey are not specified to be located within the staging area.

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Issue	Dam Removal Alternative-Partial Sediment Removal (FEIS October 1996)	Dam Removal Alternative (FSFEIS June 2002) Analyzed in the Draft SEIS
Great Blue Heron (state monitor species)	Known to occur in the study area, but no known nest sites. Herons not specified to be located within the staging area.	Known to occur in the study area, but no known nest sites. Herons not specified to be located within the staging area.
SUM OF DIFFERENCES USED TO JUSTIFY NO FURTHER EVALUATION OF PARTIAL SEDIMENT REMOVAL IN THE DRAFT SEIS	<ol style="list-style-type: none"> 1. The Partial Sediment removal would fill 44 more acres with dredged sediment than the Alternative evaluated in the Draft SEIS, however the impacted area would be orchard and rangeland. The area would be reclaimed after fill. 2. Dredging and dam removal would take 4 years longer 	
Sediment Deposit in the in-lieu site	Lesser (but not analyzed)	Much sediment would be deposited in the in-lieu site.
Water Quality Impacts	Lesser (but not analyzed)	Lethal initially to all life in the White Salmon River; Episodic for 5 years and reasonably up to 10 years or longer in the White Salmon River up to decades to centuries if landslides occur; Initial impacts will violate water standards to the Mouth of the Columbia River
Sediment Transport	Lesser (but not analyzed)	Will kill most organisms from the reservoir to the Columbia River. Salmon trying to spawn in the White Salmon River will be killed and the year class lost Sediment will fill the fish-rearing channels of the USFWS fish rearing facility
Thermal Refuge Habitat Impacts	Lesser (but not analyzed)	Thermal refuge habitat closest to the Columbia River will be lost to Columbia River migrants.
Fish Population Impacts	(Lesser (but not analyzed)	Adverse impact to Steelhead, Chinook, chum, coho, and bull trout populations

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ATTORNEYS AT LAW



March 7, 2003

VIA FACSIMILE & U.S. MAIL

Ms. Susan Braley
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Re: Ecology's Request for Comments on Proposed Water Quality Standards
Revisions: Comments of Klickitat and Skamania Counties on Proposed
Water Quality Standards - Condit Dam Hydroelectric Project

Dear Ms. Braley:

This firm represents Klickitat and Skamania Counties (the "Counties") who are parties to a Federal Energy and Regulatory Commission ("FERC") relicensing proceeding for the Condit Dam in the State of Washington (FERC Project No. 2342-011). On January 30, 2003, Don Struck, Klickitat County Commissioner, outlined in testimony the Counties' opposition to specific provisions in the proposed State Water Quality Standards ("State Standards") designed to facilitate removal of Condit Dam. Commissioner Struck also outlined the Counties' concerns regarding the integrity of the Washington State Department of Ecology's ("Ecology's") rulemaking process. The Counties' outlined, in great detail, how Ecology's back door negotiations and collaboration with PacifiCorp ("PC"), resulted in proposed changes to the State Standards that will permit PC to implement its preferred blow and go method of dam removal. PC's preferred dam removal plan will result in the release of over 2.4 million cubic yards of sediment into the Lower White Salmon River without adequate environmental safeguards.

In response to pressure from PC, Ecology has proposed several amendments to the State's Water Quality Standards that are clearly inconsistent with Section 303(c) of the Clean Water Act and State law, i.e., Chapter 90.54 RCW. Ecology and PC have crafted exceptions to State Standards for dam removal and other activities that leaves the door open for the unmitigated destruction of existing beneficial uses in Washington's rivers and streams. Despite Ecology's stated position to the contrary, the Clean Water Act's goal of restoring the nation's waters does not sanction the unmitigated destruction of existing beneficial uses even where some uncertain long-term benefit may result. Ecology should withdraw proposed rule

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This is a legal argument to which no response is required because it is not directly relevant to SEPA.

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language that creates a double-standard of water quality protection for dam removal projects and adopt an antidegradation policy that is consistent with minimum protections afforded by State and federal law.

Ecology is Proposing a Double Standard of Lesser Environmental Protection for Dam Removal Projects.

Ecology is attempting to carve out an exception for dam removal projects that is inconsistent with strict water quality standards and regulatory burdens that are imposed on the agricultural community and hundreds of other businesses and industries in Washington State. Crafting rules that would allow the unmitigated release of 2.4 million cubic yards of sediment into the Lower White Salmon and Columbia Rivers is without precedent. Ecology has a long history of pursuing violations of discharge standards that are far less egregious than what the agency is prepared to permit here. The broad exception envisioned by PC and Ecology will apply statewide to other hydroelectric projects and other yet undefined "restoration activities." Environmental restoration is a laudable goal. However, Ecology has been led to believe by PC that there are instances where restoration cannot be achieved without allowing significant degradation of existing water quality or "short-term" destruction of existing beneficial uses. This rationale is flawed.

First, in the case of Condit Dam, the applicant can provide sufficient environmental mitigation by deferring project removal until such time as project funds are available to implement appropriate mitigation. Second, Ecology is proposing a loophole standard that will allow certain private entities to avoid mitigation responsibilities simply by choosing arbitrary timeframes that create some financial hardship that prohibits the implementation of appropriate mitigation. In the case of Condit Dam, Ecology is going far beyond its statutory responsibilities to bail out a multi-national entity that may or may not find itself in an unfortunate financial/business predicament. After benefiting from the operation of Condit Dam for nearly a century, at the environment's expense, PC is now asking Ecology to adopt a rule that assures that PC will not have to bear the cost of complying with State Standards designed to protect water quality for species that utilize Northwestern Lake and the Lower White Salmon and Columbia Rivers.

Ecology should not adopt a double standard for PC, or adopt a double standard for environmental restoration projects. The adverse impacts of sediment discharges on water quality should be regulated in the same manner regardless of the project purpose. Ecology does not, for example, carve out exceptions for discharges from municipal waste water or stormwater projects even though those projects or operations are clearly in the public interest and provide substantial public benefit.

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The Rulemaking Process was Compromised by Ecology’s Collaboration With PacifiCorp

The rulemaking procedures in the Administrative Procedures Act outline a specific process whereby interested parties can effectively and equitably participate in the rulemaking process. Unfortunately, in this case, Ecology failed to meet that standard and has allowed a private corporation, PC, to influence this rulemaking process to further PC’s agenda as well as Ecology’s own agenda. Specific proposed changes to the State Standards were developed and negotiated behind closed doors between Ecology, PC, and other dam removal supporters. The documents submitted by the County during the January 30, 2003, public hearing (attached) clearly illustrate this fact. The threshold question that the County has been asking for some time on the Condit Dam removal project is whether Ecology’s signing of the Settlement Agreement and its dual responsibility as a permitting agency can be carried out in a fair and unbiased manner. Based on the County’s review of public records in Ecology’s offices, it is clear that Ecology has prejudged the outcome of the Condit Dam project, prejudged the outcome of the SEPA process, and prejudged the outcome of the related 401 and NPDES permit processes. The Department’s earlier representations to the Klickitat County Commissioners that Ecology’s work would be done in a “open and transparent way” rings hollow.

In June of 1999, PacifiCorp sent a letter to Ecology stating “significant rulemaking actions by Ecology will be necessary to facilitate permitting for Project Removal.” Just seven days later Ecology’s representative responded “I have advised the Ecology Water Quality Program to modify or adopt new regulations to accommodate this project.” “Ecology staff are aware that current regulations may not permit the proposed removal.” What is even more disturbing to the Counties is that the documents clearly show that PC’s own attorney drafted proposed rule changes, and met with Ecology staff extensively to refine the proposed language. Is this open and transparent rulemaking or decisionmaking?

Proposed Changes to the State Water Quality Standards are Inconsistent With Federal Law

The proposed language in WAC 173-210A-410(3) is vague and inconsistent with federal antidegradation standards. The following is an excerpt from the applicable federal antidegradation regulations:

- (a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

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This is a legal argument to which no response is required because it is not directly relevant to SEPA.

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(1) Existing instream water uses and level of water quality necessary to protect the existing uses shall be maintained and protected.

40 CFR § 131.12.

Federal rules allow for limited exceptions to the federal mandate to protect existing instream uses. In instances where the quality of waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, a state may adopt an antidegradation policy that allows for a lowering of water quality to accommodate important economic or social development in the area in which the waters are located. See 40 CFR § 131.12. Even where social and economic justifications permit the lowering of water quality, a state must “assure water quality adequate to protect existing uses fully.” 40 CFR § 131.12.

The United States Supreme Court has recognized that the federal antidegradation policy requires that “[s]tates must implement their antidegradation policy in a manner consistent with existing uses of the stream....” *Pend Orielle County v. Department of Ecology*, 146 Wn.2d 778, 811, 51 P.3d 744 (2002) (quoting *Public Utility District No. 1 of Jefferson County v. Washington Dep’t of Ecology*, 511 U.S. 700, 718, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994)). The Court noted that the Environmental Protection Agency (“EPA”) has interpreted its antidegradation regulation in a way such that “no activity is allowable... which could partially or completely eliminate any existing use.” *Pend Orielle County*, 146 Wn.2d at 811 (citing *PUD No.1 of Jefferson County*, 511 U.S. 700, 718 (1994)).

Ecology is proposing an exception in the State’s antidegradation policy for “major watershed restoration activities that will provide greater benefits to the health of the aquatic system in the long-term (such as removing dams...) which, in the short term may cause significant impacts to designated uses....” Proposed WAC 173-210A-410(3). The proposed rule is vague and inconsistent with the federal antidegradation mandate regarding minimum protection of existing uses. The phrases “major watershed restoration activities,” “short term,” and “significant impacts” are not defined in the proposed rules. No minimum level of protection for existing uses is provided despite a federal mandate to the contrary.

The result of the back-door collaboration with PC is proposed changes to the State’s Antidegradation Policy that would allow the unmitigated release of 2.4 million cubic yards of sediment and debris from behind Condit Dam without adequate environmental safeguards. An attempt to classify the Condit dam blow and go method of dam removal as a “major watershed restoration activity” having short-term impacts is at best, a stretch. Sediment released from behind Condit Dam “would be lethal to all life stages of anadromous and nonanadromous species and macroinvertebrates in the river downstream of the dam.” Condit FSFEIS at 112. The

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